# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

HEALTHCARE SERVICES GROUP, INC.

and CASES 3-CA-25351 3-CA-25437

1199 SEIU NEW YORK'S HEALTH AND HUMAN SERVICES UNION

AARON MANOR REHABILITATION AND NURSING CENTER, LLC

and CASES 3-CA-25352 3-CA-25438

1199 SEIU NEW YORK'S HEALTH AND HUMAN SERVICES UNION

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1 (HEALTHCARE SERVICES GROUP, INC.)

and CASE 3-CB-8375

LUIS MORA, an Individual

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1 (AARON MANOR REHABILITATION AND NURSING CENTER, LLC)

and CASE 3-CB-8376

CYNDIA PEREZ, an Individual

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### **DECISION**

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### **Statement of the Case**

MARGARET G. BRAKEBUSCH, Administrative Law Judge. This case was tried in Rochester, New York, on July 25, 26, 27, 28, and 29, 2005. The original charge in Case 3-CA-25351 was filed by 1199 SEIU New York's Health and Human Services Union, herein SEIU, on April 7, 2005, 1 and the charge was thereafter amended on June 9, 2005. The original charge in 3-CA-25352 was filed by the SEIU on April 7, 2005, and amended on June 9, 2005. The original charge in Case 3-CB-8375 was filed by Luis Mora, herein Mora, on April 22, 2005, and the charge was amended on June 13, 2005. The original charge in Case 3-CB-8376 was filed by Cyndia Perez, herein Perez, on April 22, 2005, and the charge was amended on June 22, 2005. The SEIU also filed the charge in Case 3-CA-25437 on June 9, 2005, and the charge in Case 3-CA-25438 on June 9, 2005. Based upon the allegations contained in these charges, the Regional Director for Region 3 of the National Labor Relations Board, herein the Board, issued an Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing on July 8, 2005.

The consolidated complaint alleges that since on or about January 28, 2005, Aaron Manor Rehabilitation and Nursing Center, LLC, herein Aaron Manor, rendered assistance and support to United Food and Commercial Workers, Local 1, herein UFCW, by granting access to its Fairport, New York facility, informing employees that the UFCW was there to meet with them, allowing employees to meet with the UFCW during work time, permitting the UFCW to solicit authorization cards while at its Fairport, New York facility, submitting to a card check, and by denying the same opportunity to the SEIU. The consolidated complaint also alleges that on or about January 29, 2005, Aaron Manor, by Ellen Edler, interrogated its employees about their union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees. The consolidated complaint further alleges that since on or about February 1, 2005, Healthcare Services Group, Inc., herein Healthcare Services, and Aaron Manor unlawfully granted recognition to the UFCW and has thereafter unlawfully entered into, maintained, and enforced a collective-bargaining agreement with the UFCW.

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All dates are in 2005 unless otherwise indicated.

The consolidated complaint additionally alleges that since on or about May 7, 2005, Aaron Manor and Respondent Healthcare Services, unlawfully entered into a collective-bargaining agreement with the UFCW that includes a union security clause. The consolidated complaint alleges that although the UFCW unlawfully received assistance and support from Aaron Manor and unlawfully received recognition from, and entered into a collective bargaining agreement with Aaron Manor and Healthcare Services, it did not represent an uncoerced majority of Unit<sup>2</sup> employees employed by Aaron Manor and Healthcare Services.

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On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Counsel for the General Counsel, Aaron Manor, the UFCW, and the SEIU, I make the following:

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### **Findings of Fact**

### I. Jurisdiction

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Aaron Manor, a corporation, with an office and place of business in Fairport, New York, has been engaged in the operation of a nursing and long-term care facility. Annually, Aaron Manor derives gross revenues in excess of \$100,000 and purchases and receives at its Fairport, New York facility, goods valued in excess of \$50,000, directly from points located outside the State of New York. Healthcare Services, with an office and place of business in Fairport, New York has been engaged in providing laundry and housekeeping services to long-term care institutions. Annually, Healthcare Services purchases and receives at its Fairport, New York facility goods valued in excess of \$50,000 directly from points located outside the State of New York. Aaron Manor and Healthcare Services admit, and I find that that they are joint employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Aaron Manor and the UFCW admit, and I find<sup>3</sup> that the UFCW and the SEIU are labor organizations within the meaning of Section 2(5) of the Act.

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### **II. Alleged Unfair Labor Practices**

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### A. Issues

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- 1. Did Aaron Manor unlawfully assist the UFCW in obtaining union authorization cards from its employees by refusing SEIU access to its employees and premises for organizational purposes, while according such privileges to the UFCW?
- 2. Did Aaron Manor and Healthcare Services unlawfully grant recognition to

- The employees included in the bargaining unit by Aaron Manor and the UFCW are all regular and full-time and regular part-time non-professional and non-managerial employees employed by Aaron Manor and Health Services at the Fairport, New York facility and excluding all professional, clerical, maintenance, guards, and supervisory employees as defined in the Act.
- Healthcare Services asserts in its answer that organizational status is a conclusion of law to which no response is required.

UFCW at a time when it did not enjoy support from an uncoerced majority of their employees?

3. Did UFCW unlawfully accept Aaron Manor's<sup>4</sup> unlawful assistance?

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- 4. Did UFCW unlawfully accept Aaron Manor's and Healthcare Services' recognition?
- 5. Did UFCW, Aaron Manor, and Healthcare Services unlawfully enter into, maintain, and enforce a collective bargaining agreement including a union-security clause, when the UFCW did not represent an uncoerced majority of employees?
- 6. Is the UFCW's claim of majority support invalid because the supporting authorization cards are tainted by unlawful employer assistance?
- 7. Is the UFCW's claim of majority support defective because the UFCW's misrepresentations tainted the supporting authorization cards?
- 8. Did Aaron Manor, acting through Ellen Edler, interrogate its employees about their union membership, activities, and sympathies as well as the union membership, activities and sympathies of other employees?

### B. Background

It is undisputed that Dennis Christiano is the primary owner of Westgate Manor Nursing Home, herein Westgate, in Rochester, New York. Christiano additionally held an ownership interest in Brae Loch Manor, another Rochester, New York nursing care facility. During the summer of 2004, the SEIU conducted an organizing campaign involving the employees of both Westgate and Brae Loch. SEIU organizer Dana Alas testified that during contacts with employees at Brae Loch, SEIU learned that some of Brae Loch employees were to transfer to Aaron Manor, a new replacement facility under construction. In approximately July 2004, the SEIU suspended its organizational activity at Brae Loch and focused its attention on the Westgate facility. The parties appear to be in agreement that the Westgate organizational campaign resulted in a heated and bitter dispute. In her brief, counsel for Aaron Manor asserts that Westgate was the subject of "an antagonistic and polarizing organizational campaign" by the SEIU. SEIU Representative Dana Alas testified that while representatives of the SEIU were not escorted from the property, the police were called on a regular basis. An election was held on October 15, 2004, and Westgate filed objections to the results of the election on October 21, 2004. The SEIU was thereafter certified as the collective bargaining representative for a unit of Westgate employees on March 23, 2005.

In July 2004, Aaron Manor was opened as a replacement facility for both Brae Loch and another nursing care facility identified as Nor Loch and the ownership interest was purchased by Dennis Christiano, Glen Russ, and William Pascocello. Many of the Brae Loch residents transferred to Aaron Manor and approximately 60 percent of Brae Loch employees transferred to Aaron Manor. Housekeeping employee Luis Mora testified that with the

Counsel for the General Counsel takes the position that only Aaron Manor is responsible for unlawful assistance to UFCW. Counsel for the General Counsel concedes that there is no record evidence that Healthcare Services knew or should have known of the alleged unlawful assistance.

exception of two employees, all of approximately 79 housekeeping and laundry employees transferred to Aaron Manor. Brae Loch Administrator Joseph Dilal and a majority of the Brae Loch managerial staff transferred to Aaron Manor.

William Pascocello serves as a trustee of the Greater New York 1199 (SEIU) Pension and Welfare, Training and Education, Job Security, and Child Care Fund. He has an ownership interest in not only Aaron Manor, but also Florence Nightingale Health Center in New York City and the Niagara Rehabilitation and Geriatric Center in Niagara Falls, New York. The employees of the New York City facility are represented by SEIU and the employees at the Niagara Falls facility are represented by UFCW.

### C. The SEIU's Presence at Brae Loch

In the spring of 2004, Housekeeping employee Luis Mora encountered a representative of the SEIU inside the Brae Loch facility. The next day Mora told Supervisor Mary Ann Berg<sup>5</sup> and suggested that she inform Dilal that an SEIU representative was in the facility. Berg later told Mora to personally speak with Dilal about this matter. When Mora spoke with Dilal, he explained that he had met a young woman from the SEIU in the building and that he had also heard a couple of other employees at the facility talking about a union.

Approximately a week after Dilal's conversation with Mora, Dilal conducted a meeting with all of the employees. In describing Dilal's comments at the meeting, Mora testified: "Mr. Dilal said to us employees that he heard that there was talk about a union, we didn't need a union; that we were family and we could take care of our own problems." Dilal does not deny that he told employees in the staff meeting that he did not think that the facility needed a union. He recalled that he told employees that they had always been a family and they could take solve any problems internally.

It is undisputed that Dilal also issued a letter to employees as a follow-up to the employee meeting. In the letter, Dilal cautioned employees about signing union cards for the SEIU. He explained that signing a union card could be the first step toward "bringing the problems and disruptions that often come hand in hand with a union." Dilal further urged: "Considering the disadvantages of the union, there is no reason to take a chance that they will bring their problems into our home and into your lives as well as our residents' lives." Dilal ended the letter by telling employees that he objected to the Union's calling them at work and visiting their homes. He told employees that they did not have to talk with representatives of the Union or to attend Union meetings.

Healthcare Services stipulated that Maryann Berg is an employee of Healthcare Services and a supervisor.

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### D. The SEIU's Contacts with Aaron Manor

As Executive Vice President of the SEIU's Nursing Home Division, Jay Sackman is responsible for the representation of 50,000 nursing home employees in over 220 nursing homes in the New York Metropolitan area. Sackman negotiates and oversees the administration of the master collective bargaining agreements. Sackman not only serves on the Board of Trustees for various funds, he also serves as the co-chairman for a number of employee benefit and pension funds.

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Bruce Popper is the SEIU's Vice President in charge of the Rochester, New York office. In a telephone conversation during the summer of 2004, Popper told Sackman that their office had been involved in organizing efforts at the Brae Loch nursing care facility. Popper explained Brae Loch's residents and staff were being transferred to a new facility identified as Aaron Manor. Explaining that William Pascocello was one of the owners of Aaron Manor, Popper asked Sackman about his relationship with Pascocello. Sackman told Popper that he had a good relationship with Pascocello and that he served with Pascocello as trustee on various benefit and training funds. Popper asked Sackman to contact Pascocello to set up a meeting for SEIU and the owners of Aaron Manor.

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Sackman's first conversation with Pascocello on this issue occurred on September 29, 2004 while they were attending a trustees' meeting of the Greater New York Benefit and Pension Fund. Sackman recalled at the end of the meeting, he pulled Pascocello aside and told him that he understood that Pascocello was a partner in Aaron Manor; a newly opened facility in the Rochester, New York area. When Pascocello confirmed that he was a partner, Sackman explained that SEIU would like to meet with Pascocello and his partners. Sackman recalled that he told Pascocello that SEIU would like a card count. In the event that the partners would not agree to a card count, the SEIU would at least want a code of conduct or a neutrality agreement in order that the SEIU could begin "in a positive way" with the employees. Sackman also told Pascocello about the SEIU's successful attempt to obtain grant money from the State of New York for gerontology and dementia training for the Florence Nightingale facility in upstate New York. Sackman recalled that Pascocello told him that he would talk with his partners and get back with Sackman. Pascocello cautioned, however, that Dennis Christiano was one of his partners at Aaron Manor and Christiano had a "bitter taste in his mouth and a bad attitude" about the SEIU because of what occurred at the Westgate facility.

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Pascocello recalled speaking with Sackman at a trustee's meeting in the fall of 2004. Pascocello testified that during a break in the meeting, Sackman asked him if he knew Dennis Christiano and Pascocello told him that he did. Pascocello recalled that Sackman told him that upstate SEIU wanted a meeting with Christiano to discuss a less adversarial process for SEIU's organizational campaign at Westgate Nursing Home. Pascocello denied that Sackman ever mentioned Aaron Manor during this conversation.

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Sackman testified that while he telephoned and left messages for Pascocello several times in October 2004, Pascocello never got back with him. Sackman next discussed this

issue with Pascocello on November 17 when they attended an investment committee meeting of the Greater New York Pension Funds. Before any of the other committee members arrived, Sackman asked Pascocello what was happening with the meeting with the partners and when they could schedule the meeting. Pascocello told Sackman that because Christiano was "pretty bitter" about Westgate, it was difficult for him to meet. Pascocello stated that he would continue to "work on it" and that he would get back with him. Sackman also recalled that he told Pascocello that he was holding back the SEIU from starting an antagonistic campaign at Aaron Manor and that he had told the SEIU organizers to wait until he had a chance to meet with Pascocello and his partners.

Pascocello testified that following his first meeting with Sackman, he contacted Christiano and communicated Sackman's request for a meeting concerning Westgate. Pascocello testified that when he again spoke with Sackman approximately six weeks to two months later, he told Sackman that Christiano was not interested in a meeting and was "pretty adamant" because of the situation at Westgate. Pascocello acknowledged that during the second meeting with Sackman in the fall of 2004, Sackman brought up Aaron Manor and asked if Christiano would be willing to sit down and discuss the Aaron Manor facility. Pascocello recalled telling Sackman: "If he's not willing to talk to you, sit down and talk about Westgate, I don't think he's going to be willing to sit down and talk about Aaron Manor."

Sackman testified that he and Pascocello next spoke about this issue when they attended a meeting on January 7, 2005, concerning the potential bankruptcy of another nursing home. At the end of the meeting, Sackman approached Pascocello and reminded him that they had begun the conversation about the meeting as early as September 2004. Pascocello explained to Sackman that his partners didn't want to meet and that they had a "real problem" with SEIU. Sackman explained that based upon his gestures, movement, and manner of speaking, Pascocello's appeared uncomfortable with this discussion. Sackman told Pascocello that if they were not able to arrange for the requested meeting, he would not be able to hold back the new organizing team for Aaron Manor. Sackman testified that Pascocello implored: "Give me one more chance." Sackman recalled, however, that he heard nothing further from Pascocello.

In contrast to Sackman's recollection, Pascocello testified that he had only two conversations on this subject with Sackman and the conversations occurred in the fall of 2004. He denied that Sackman ever asked for access to Aaron Manor. He also denied that he had any conversation with Sackman about Aaron Manor during January 2005. When asked on direct examination how he could be sure that he did not, he asserted that he would have remembered it because it would have been an important conversation for him to relate to the shareholders.

John Chobar is the Executive Director for the Greater New York Health Care Facilities Association; a trade association comprised of approximately 80 nursing homes in the New York City area. Pascocello is also an officer of the association. Chobar testified that he is not only a friend of Pascocello's, but also a business associate. Pascocello is a

consultant to Chobar's company that manages a facility in Orange County, New York. Chobar and Pascocello also serve together as co-trustees for certain pension and welfare funds. Chobar testified that he was present for at least two conversations between Pascocello and Sackman during the fall of 2004 concerning the SEIU's access to an upstate facility. Chobar recalled Sackman's asking for the SEIU's access to meet with employees. While he recalled hearing Christiano's name mentioned in the second conversation, Chobar could not recall with certainty that he heard the name of the upstate facility they were discussing in either conversation.

### E. UFCW's Contacts with Aaron Manor

Pascocello maintained that he never spoke with Christiano about a meeting with SEIU concerning Aaron Manor. UFCW Representative Leo Alcuri testified that beginning in October 2004, he spoke with Pascocello five or six times about obtaining access to Aaron Manor. He did not however, have any documentation or records concerning the dates of his conversations. While Pascocello testified that he received several telephone calls from the UFCW's organizer, he did not identify the dates or specific content of the conversations. He acknowledged however, that in January 2005, he spoke with his partners Russ and Christiano about the UFCW. He additionally arranged for Alcuri to meet with Christiano and Aaron Manor Administrator Joe Dilal in January 2005. Pascocello admitted that at the time that he did so, he understood that the SEIU also wanted to meet with Christiano because the SEIU was interested in organizing the employees at Aaron Manor.

Although Alcuri asserted that he made prior requests to Pascocello for access to Aaron Manor, Pascocello agreed on January 10, 2005 to give the UFCW access to Aaron Manor. Alcuri told Pascocello the dates that he was available to come into the facility and the classifications of employees that UFCW wanted in the bargaining unit. There is no record evidence that Pascocello or any of the owners disputed either the dates or the classifications proposed by Alcuri. Pursuant to the agreement with Pascocello, UFCW representatives were given access to the Aaron Manor facility on January 28 and 29; the dates selected by Alcuri.

UFCW Representatives Leo Alcuri, Steven Phelan, and Mark Manna arrived at the Aaron Manor facility in the afternoon on January 28, 2005. They initially met with Dilal and Christiano for approximately one-half hour. They worked out an arrangement for meeting with employees and Dilal provided Alcuri with a list of employees in the proposed unit. Dilal told the union representatives that employees would be notified that the UFCW was present and employees would be able to talk with them. Union representative Phelan testified that prior to January 28, 2005; he had not had any contact with the employees of Aaron Manor. Additionally, the UFCW presented no evidence to show that either Alcuri or Manna had spoken with Aaron Manor employees prior to January 28, 2005. The three union representatives began meeting with employees around 5:00 or 6:00 p.m. They continued to meet with employees throughout the evening and until sometime between 12:00 p.m. and 1:00 a.m. the following morning. On Saturday morning, January 29, UFCW representatives returned to the facility and began meeting with employees at approximately 5:30 a.m. They finished sometime between 5:00 p.m. and 7:00 p.m. that same day.

UFCW representative Phelan testified that Alcuri and Christiano decided that the UFCW representatives would meet with employees in the Rehabilitation area.<sup>6</sup> He asserted that they were to "limit their travels" to that one room and not to wander in the halls. Kitchen employee Sharon Tombs testified that one of the UFCW representatives approached her twice in the facility before she actually spoke with him about signing the authorization card. The UFCW representative initially approached her in the staff snack room as she was coming in to work. The second time the UFCW representatives approached her, she had already clocked in and was working in the kitchen. CNA Linda Rodriguez recalled that she was transporting residents in the facility hallway when Alcuri and another representative approached her and asked if they could speak with her. She told them that she was working at the time. Later in the day, Rodriguez was again approached by the UFCW representatives while she was working. She eventually met with the representatives in the scheduler's office. Housekeeping employee Luis Mora recalled that UFCW representative Phelan was standing in the hallway during one of Mora's conversations with him.

Certified nursing assistant Teresa Mazza testified that she was told by her supervisor on January 28 that the facility's owner sent the union and the employees needed to speak with the union representatives before leaving the facility. Licensed practical nurses Elizabeth Ruiz and Cyndia Perez recalled that during the evening of January 28, Director of Nursing Ellen Edler visited their work area. Edler told them that the owner had sent union representatives to the facility and the employees were to talk with the representatives. Ruiz overheard Edler telling other employees to "go downstairs" to talk with the union representatives.

Perez confirmed that Edler not only encouraged the nurses to go to see the union representatives, but asked the nurses to encourage the nursing assistants to go to talk with the representatives. When Ruiz asked when they were to go, Edler told them that she would cover the floor while they met with the representatives. Ruiz testified that Edler later came back to the work area and inquired: "Did everybody go down?" Both Alcuri and Edler confirmed that during UFCW's visit to the facility, Edler talked with the representatives about individual employees and discussed whether specific employees had spoken with the representatives and whether particular employees wanted to speak with the representatives.

Edler testified that as Director of Nursing, she does whatever needs to be done for the patients and residents living in the facility. She asserted that in her capacity, she visits all the floors and helps to pass medications if the nurses are getting behind schedule and also relieves for breaks or answers patient call bells. Perez testified, however, that it was not Edler's practice to cover for the nurses on dispensing medications or to provide cover on the floor while employees were on break. Edler testified that while she spoke with employees about the UFCW's presence in the facility on January 28 and 29, she did so in response to employee questions. She also recalled that she told employees that the UFCW was the representative in

While the UFCW representatives were given the rehabilitation or physical therapy room for meeting with employees on January 28, they were moved to the scheduler's office to meeting with employees on January 29.

one of the owner's other facilities. She denied that she told any employees that the owners sent the UFCW. She maintained that it was her understanding that the owners allowed the UFCW to come into the facility.

Edler initially denied that she ever went into the area where the UFCW representatives were meeting with employees. When she was later asked how she knew that the union had a list of employees, she acknowledged that she saw it on the desk where the UFCW representatives were sitting. She thereafter acknowledged that her office was right across from the office where the UFCW representatives were meeting with employees and that she "would peek in occasionally, but didn't sit down."

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As the UFCW representatives were nearing the end of their meetings with employees on January 29, Alcuri told Dilal that the representatives were leaving and they believed that they had authorization cards from a majority of employees. Even prior to UFCW's visit to Aaron Manor on January 28 and 29, Alcuri had already arranged for a card count to be conducted by a representative of the New York State Employment Relations Board at the UFCW's Buffalo, New York office. At the end of the card count on February 1, 2005, the representative of the New York State Labor Relations Board certified that the UFCW had submitted 49 valid authorization cards in a unit of 97 employees. The parties stipulated, however, that there were 99 employees in the bargaining unit on February 1, 2005, and that the UFCW initially submitted a total of 53 authorization cards for the card count. Dilal testified that he provided no list of employees to the State Employment Relations Board for the card count and that the list of employees that was used at the card count was a list submitted by Alcuri. The employee list identified by Alcuri and Dilal as that submitted to the State Employment Board contained the names of 96 employees.

On the same date of the card count, Aaron Manor recognized the UFCW as the collective bargaining representative for a unit of employees that it employs jointly with Healthcare Services. Dilal testified that prior to the date of the card count, he had already discussed the card count with Maryann Berg; Healthcare Service's Supervisor for Housekeeping and Laundry Services at Aaron Manor. There is no dispute that Healthcare Services' employees in laundry and housekeeping were also included in the bargaining unit represented by the UFCW.

### F. Events Occurring after the UFCW's Recognition

On March 8, the UFCW sent Aaron Manor employees a contract survey and an invitation to attend one of two meetings scheduled for March 23, 2005 to discuss upcoming negotiations. Four employees attended one of the meetings and no employees attended the second scheduled meeting. Alcuri acknowledged that two of the four employees who attended the meeting were not happy and were accompanied by approximately 20 SEIU organizers. He described the day as very disruptive.

After receiving the March 8<sup>th</sup> letter, Cyndia Perez contacted SEIU representative Dana Alas with questions about how the UFCW could be her bargaining representative. Alas

testified that she received telephone calls from other employees with similar questions. After speaking with Alas, Perez not only signed a union authorization card for the SEIU, but she also took authorization cards to distribute to other Aaron Manor employees. Both Perez and CNA (Certified Nursing Assistant) Maria Glenn circulated the SEIU authorization cards in the facility. On March 22, 2005, the SEIU filed two petitions<sup>7</sup> for representation with Region 3 of the Board, seeking to represent the employees of both Aaron Manor and Healthcare Services. Alas testified that after filing the petitions with the Board, the SEIU was informed that there could not be a Board election because there was already a recognized union at the facility. On March 24, 2005 Glenn and Perez began circulating a petition among employees indicating that the employees did not want the UFCW as their bargaining representative.

On March 25, 2005, Alcuri negotiated an access and grievance procedure agreement with Christiano. Alcuri recalled that the UFCW and Aaron Manor additionally met for negotiations on April 14, April 25, April 26, and May 3, 2005. Luis Mora testified that when he learned that there was a negotiating committee at the facility, he asked Healthcare Services supervisor Berg about the committee. She told him that she was aware of the committee because Dilal had asked her to appoint an employee from her department to serve on the committee. Neither Dilal nor Berg testified concerning this alleged appointment of employees for the negotiating committee.

On April 26, 2005, the SEIU presented Aaron Manor with the petition that had been circulated and signed by employees indicating that they did not want to be represented by the UFCW. While some of the signatures are repeated on the petition, Counsel for the SEIU and Counsel for the General Counsel asserts that the petition contains approximately 70 employee signatures. In the letter accompanying the petition, the SEIU asserted that based upon the petition, the UFCW had not lawfully obtained the support of a majority of the Aaron Manor employees and urged that Aaron Manor had no legal justification to continue to bargain with the UFCW. Aaron Manor did not respond to the SEIU's letter. Aaron Manor and the UFCW signed an agreement in May and the contract was ratified on May 10, 2005.

### **III. Analysis and Conclusions**

Under Section 8(a)(2) of the Act, an employer commits an unfair labor practice by recognizing a minority union as the exclusive representative of its employees. *International Ladies Garment Workers' Union v. NLRB*, 366 U.S. 731 (1961); *McClaren Health Care Corporation*, 333 NLRB 256, 257 (2001). UFCW asserts, however, that as long as a rival union has not filed a representation petition with the Board, an employer may lawfully recognize a union and a union may lawfully accept recognition based on the union's showing that it represents a majority of the employees.<sup>8</sup> The UFCW thus asserts "Since the parties stipulated that that the UFCW had 53 cards out of 99, there is no question that the Union had presented a showing that it had the support of a majority of the employees in the unit." The

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UFCW further maintains that inasmuch as the SEIU did not file its representation petitions

<sup>&</sup>lt;sup>7</sup> 3-RC-11576 and 3-RC-11577.

<sup>8</sup> Bruckner Nursing Home, 262 NLRB 955, 957 (1982).

until March 22, 2005, UFCW's majority showing was established as of February 1, 2005.

Counsel for the General Counsel alleges, however, that Aaron Manor discriminated against the SEIU by granting UFCW access to its Fairport, New York facility and agreeing to a card check, leading to the unlawful recognition of the UFCW. Citing *NLRB v. Windsor Castle Health Care Facilities, Inc.*, 13 F.3d 619, 623 (2nd Cir. 1994), Counsel for the General Counsel additionally maintains that because the UFCW's claim of majority support is based upon cards that have been tainted by unlawful employer assistance, the grant of recognition by Aaron Manor and Healthcare Services violates Section 8(a)(2) and (1) of the Act.

### A. Whether Aaron Manor Discriminated Against the SEIU

The UFCW argues that in order to make out a claim that an employer has unlawfully favored one union over another, there must be proof that the complaining union was actually involved in an organizing campaign and not simply contemplating or gearing up for a campaign.<sup>9</sup> The UFCW asserts that while Sackman was speaking with Pascocello, SEIU was not involved in speaking with individual employees. While there is no record evidence that the SEIU contacted or solicited Aaron Manor employees between July 2004 and the UFCW's first visit to Aaron Manor on January 28, 2005, there is additionally no evidence that the UFCW engaged in any organizational campaign at either Aaron Manor or Brae Loch prior to January 28, 2005. Alcuri admitted that while he had spoken with one Brae Loch employee in December 2003, he discovered that there was no interest in UFCW's organizing. By contrast, however, there is no dispute that the SEIU was actively involved in an organizing campaign at Brae Loch just prior to the transfer of employees and residents to Aaron Manor. As evidenced by his speech and letter to Brae Loch employees, Dilal was well aware that the SEIU was actively pursuing support from the Brae Loch employees prior to their transfer to Aaron Manor. Dilal recalled that he posted the letter to Brae Loch employees in May or June 2004 prior to the opening of Aaron Manor in July 2004. Dilal also admitted that prior to the opening of Aaron Manor, Brae Loch employees were not only interviewed to work at Aaron Manor, but employees who had already been hired for Aaron Manor continued to work at Brae Loch pending the opening. In Dilal's letter to employees, he assured them of their job security when they became a part of the Aaron Manor staff and told them that signing an authorization card for the SEIU could "be the first step towards bringing the problems and disruptions that often come hand in hand with a union." Thus, there is no question that the SEIU engaged in organizing employees who ultimately became a part of the Aaron Manor workforce.

Citing *Detroit Medical Center Corp.*, <sup>10</sup> 331 NLRB 878 (2000) and other cases, the UFCW also argues that in order to prove a claim of discrimination against the SEIU, the

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<sup>45 9</sup> Rollins Transportation System, 296 NLRB 793 (1989).

The Board overruled a hearing officer's recommendation that an election be set aside because the employer granted access to a union that asked for it without notifying a rival union that it had done so. The Board found that the employer had simply considered the only access request made to it and was not obligated to offer an intervenor something it had not requested.

government must show that the employer treated the same requests of the unions differently. The UFCW asserts that Sackman only requested a meeting and never "access" to the facility. Sackman testified that when he first spoke with Pascocello, he asked for a meeting with Pascocello and his partners to discuss getting a card count or a code of conduct or neutrality agreement for SEIU to begin "in a very positive way" with the employees. Chobar credibly testified that Sackman told Pascocello that SEIU wanted to get into the facility and have access to the employees at the facility. The UFCW argues that Chobar's testimony corroborates Pascocello because Chobar testified that during the first meeting between Pascocello and Sackman, Pascocello told Sackman that his request would be difficult because he didn't have control over the facility. During the second conversation, Chobar recalled that Pascocello told Sackman that he had no control and would need to talk with Christiano. Counsel for Aaron Manor asserts that Sackman and Pascocello must have been talking about Westgate rather than Aaron Manor because Pascocello had no ownership interest in Westgate. I do not find Chobar's testimony to support this conclusion.

I found Chobar to be a credible witness. While he was called to testify for Counsel for the General Counsel, his testimony demonstrates a close working relationship with both Sackman and Pascocello. His responses to questions by all parties appeared to be based upon his best recall rather than allegiance to any party. Despite his close working relationship with both Sackman and Pascocello, his testimony reflected no apparent personal bias against or loyalty toward either individual. It was, in fact, because of his relationship with Pascocello and Sackman that he brought them together in April 2005 to discuss what had occurred with the UFCW's recognition. He explained that he did so in an attempt to "move forward in their relationships." Chobar recalled that during the April meeting, Pascocello explained to Sackman that he could not undo what had occurred because he was not the managing partner and that Christiano was involved in the day-to-day operation of Aaron Manor and had all the authority to make decisions.

It is apparent therefore that Chobar's overall testimony reflects that Sackman was seeking access to the Aaron Manor employees. Pascocello's comments that he had "no control" in his earlier conversations with Sackman are consistent with what he again told Sackman after the recognition. Based upon Chobar's credible testimony, it is apparent that Pascocello simply continued to respond to Sackman's requests by asserting that he couldn't change Christiano's negative view of the SEIU. Additionally, I do not find merit in the argument that Pascocello and Sackman were discussing access to Westgate rather than Aaron Manor in each of these 2004 discussions. Inasmuch as the Westgate election was held on October 15, 2004, the underlying petition would most likely have been filed in September or before. Thus, there would have been no need for Sackman to request access to Westgate during either the September conversation or the later conversations.

Despite the various interpretations of the words used by Sackman during his meetings with Pascocello, there is little doubt that he was asking for Aaron Manor's indulgence for SEIU to precede with a full-blown campaign at Aaron Manor. More importantly, Pascocello admitted that he understood that Sackman wanted to meet with Christiano because the SEIU wanted to organize the employees at Aaron Manor.

In his brief, counsel for the UFCW asserts that the UFCW was the only entity talking with employees whereas the SEIU only wanted to talk with the owners. Despite this assertion, however, there is no evidence that any representative of UFCW spoke with any employee of Aaron Manor prior to Aaron Manor's giving the UFCW access to its facility on January 28, 2005. There is no dispute that the organizing campaign at Westgate was adversarial and the SEIU's attempts to represent the employees were met with resistance by the employer. Because of the difficulties in that campaign, it is likely that the SEIU decided to take a different approach and establish a non-adversarial relationship with the employer prior to meeting with employees. Because the SEIU sought to meet first with the owner to achieve this goal did not diminish its intention to organize or conceal from Aaron Manor its intended purpose of meeting with, and soliciting support, from employees. Regardless of the specific wording of Sackman's requests, there could have been no doubt that the SEIU wanted access to the employees at Aaron Manor.

Although Pascocello recalled that he may have attended meetings with Sackman in January 2005, he denied that there were any discussions concerning Aaron Manor. While he acknowledged that Sackman made more than one request for a meeting with Christiano, Pascocello testified that he never asked Christiano about meeting with the SEIU concerning Aaron Manor. By contrast, Pascocello asserts that he spoke with his partners in January 2005 about the UFCW's interest in Aaron Manor. While Pascocello acknowledges that he granted Alcuri access to the facility on January 10, 2005, the record is silent as to the exact date in January when Pascocello first talked with his partners about granting access to the UFCW.

Sackman credibly testified that when he last spoke with Pascocello on January 7, 2005, he told Pascocello that if the SEIU could not get a meeting with Christiano and the owners, he could not hold back the new SEIU organizing team. His recall was very specific and detailed. Although Pascocello acknowledged that he may have met with Sackman during January 20005, he provided no specific information about the conversations. The only thing for which he was certain was his insistence that he and Sackman did not discuss Aaron Manor in January. While he asserted that if they had done so, he would have told his partners because of the importance of the conversation, he admits that he never bothered to tell Christiano about Sackman's earlier requests for a meeting concerning Aaron Manor.

Alcuri testified that while he may have made as many as five or six requests to Pascocello for access to Aaron Manor, he got "the run around" and he felt that Pascocello was "blowing [him] off." As noted above, Alcuri remembered that Pascocello resisted his requests by telling him that he had partners and he could not make the decision on his own. For no identified reason, however, Pascocello suddenly became responsive to the UFCW on January 10 and granted the UFCW's requests for access without any apparent reservations or resistance. Interestingly, neither Pascocello nor any other Aaron Manor representative explained Aaron Manor's sudden acceptance and receptivity toward UFCW. The only logical explanation for this change was Aaron Manor's fear that the SEIU would follow through on Sackman's threat of January 7. Dilal's testimony further supports this conclusion. While Dilal could not recall the date, he admitted that Christiano asked him if he was aware of any

organizing activity by the SEIU at Aaron Manor. Dilal recalled that he told Christiano that he was not aware of any activity. He testified that Christiano did not tell him his reason for asking. Although Pascocello and Dilal confirmed that Aaron Manor granted the UFCW access to the facility on January 28, they provided no explanation for doing so. If Alcuri and Pascocello are credited, Christiano and Pascocello's partners made the decision for granting access. Neither Christiano nor any other representatives of Aaron Manor were presented to testify concerning the basis for this decision.

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Sackman credibly testified that when he met with Pascocello in April 2005 and after the UFCW's recognition, he asserted that because of their past working relationship, he found Pascocello's actions very underhanded. Pascocello responded that he had not been able to get his partners to agree to Sackman's requests because he and his partners preferred the UFCW for Upstate New York. Sackman testified that Pascocello went on to explain that Christiano was very upset with the SEIU and that he had threatened to close the facilities if he had to bargain with the SEIU at either Westgate or Aaron Manor. Pascocello recalled that Sackman had been very angry about the UFCW's recognition during the April 2005 meeting. He testified that the 10 to 15 minute meeting ended badly. Pascocello recalled that during the meeting, he had made reference to the SEIU's activities in upstate New York. Chobar asked Pascocello why there was such reluctance by Aaron Manor to deal with the SEIU from upstate and western New York. Pascocello recalled that he explained: "And I told him that over the course of my dealings with people, you know, up in the region, that the 1199 upstate and the operators of many of the facilities up here had a very tenuous and difficult relationship." Pascocello did not, however, deny that he told Sackman that he and his partners preferred the UFCW for upstate New York or that Christiano had threatened to close Westgate and Aaron Manor if required to bargain with the SEIU.

I credit the testimony of Sackman and Chobar to the extent that such testimony contradicts that of Pascocello. In many respects, however, Pascocello's testimony did not directly contradict either Sackman or Chobar. The testimony of Alcuri and Pascocello points to Christiano as the authority in granting access to the UFCW. Christiano, however, did not testify. In summary, there is no record evidence to explain the timing or the rationale for Aaron Manor's sudden receptivity to the UFCW. Finding no evidence of a lawful basis for the recognition, I must conclude that the recognition was unlawfully motivated. In light of the total record evidence discussed above, I find that Aaron Manor unlawfully discriminated against SEIU in allowing the UFCW access to its facility.

### B. Whether Aaron Manor Provided Unlawful Assistance to the UFCW

As discussed above, Joseph Dilal's response to organizational efforts varied considerably with respect to the SEIU and the UFCW. When he first learned of the SEIU's organizational activity at Brae Loch, he responded by conducting a mandatory meeting with employees. He admits that he told employees to be very careful about signing union authorization cards. He also told them that he did not think that the facility needed a union; they had always been a family and solved problems internally. Dilal followed up by posting a letter to employees summarizing his concerns about the SEIU.

In complete contrast to his reaction to the SEIU organizing, Dilal did not conduct any employee meetings cautioning employees to be careful about signing union authorization cards for the UFCW. Neither Dilal nor any other representative of Aaron Manor even informed employees that the UFCW was going to have access to the facility prior to their arrival. While the UFCW representatives asserted that they were restricted to only one area of the facility, employees credibly testified that the UFCW representatives confronted them in the kitchen and hallways and well outside the alleged restricted area. Employees Toombs, Rodriguez, and Mora all credibly testified that UFCW representatives solicited their support while they were working and outside the confines of the UFCW's alleged restricted area. Alcuri admitted that when he and the other two representatives were soliciting cards, they were not always together and that they went their separate ways. Director of Nursing Edler does not deny<sup>11</sup> that she offered to cover for employees while they spoke with the UFCW representatives. She acknowledged that she spoke with a number of employees about the union in response to their questions. She recalled that she told employees that this same union represented employees at another of the owner's facilities and that the owner had allowed them to come into the facility. As discussed above, Edler initially denied that she went into the area where the representatives were talking with employees. She also denied having any discussions with the UFCW representatives about individual employees and whether the employees wanted to talk with the representatives. Upon further questioning, however, she admitted that the therapy room used by the representatives was located across the hall from her office and that she "would peek in occasionally." She also admitted that using the list provided by Aaron Manor, the representatives asked her about specific employees who had not come forward to speak with them. She also admitted that she also talked with the representatives about employees who had told her that they did not want to speak with the representatives. LPN Elizabeth Ruiz credibly testified that Edler not only encouraged her to go down to speak with the UFCW representatives, but she also encouraged Ruiz to send the nursing assistants as well. When Edler returned to the work area, she asked Ruiz if everyone had gone down to speak with the representatives. Ruiz explained that because of Edler's urging, she not only spoke with the representatives, but she also encouraged other employees to speak with the UFCW representatives. While Edler denied that she asked individual employees if they had spoken with the representatives, she testified that she did not recall any specific conversation with Ruiz. Based upon their total testimony, I find Ruiz's testimony more credible than Edler's. Unlike Edler, Ruiz's testimony was consistent and without contradictions. Accordingly, the evidence supports a finding that Edler interrogated employees in violation of 8(a)(1) of the Act.

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The UFCW is correct in its argument that there is no evidence that employees were threatened or promised benefits in relation to their choosing to meet with UFCW representatives. Additionally, there is no evidence that any employer representative told employees that they were required to sign authorization cards. The Board, however, has found that even in the absence of threats, promises, or direct coercion, an employer may

When asked if spoke with Elizabeth Ruiz on January 28<sup>th</sup> or 29<sup>th</sup> about the union in the facility, she testified that she didn't recall a specific conversation with Ruiz.

unlawfully pressure employees to sign union authorization cards. P.C. Foods, Inc. d/b/a Price Crusher Food Warehouse, 249 NLRB 433, 438, 439 (1980); Vernitron Electrical Components, Inc., 221 NLRB 464, 465 (1975). In the instant case, Aaron Manor held a meeting to prepare management for the arrival of the UFCW representatives. Employees, however, were given no prior notice and were left to be accosted and surprised by the union representatives during the course of their work day. While Aaron Manor asserts that the union representatives were simply allowed to use an empty room and see employees who chose to talk with them, the credible record evidence reflects far more involvement and participation by Aaron Manor's Director of Nursing. Admittedly, Edler conferred with the UFCW representatives about specific employees as to their availability and their interest in talking with the representatives and she occasionally went into the area where the representatives were meeting with employees. There is no dispute that she had full view as to who was meeting with the representatives inasmuch as the representatives were stationed directly across from her office. She additionally encouraged employees to talk with the representatives and she followed up to determine that the employees had spoken with the representatives. There is no dispute that the UFCW representatives engaged in a blitzkrieg solicitation, working almost around the clock for a 48-hour period. undeniably friendly and welcoming response to the UFCW was in total contrast to management's prior response to the SEIU only seven to eight months before. While an employer may lawfully provide space for a union to meet with its employees<sup>12</sup> when there is no intervention or assistance by management personnel, the record evidence does not reflect such lack of assistance in the instant case. The circumstances of this case are similar to those considered by the Board in Howard Creations, Inc., 212 NLRB 179, 182 (1974), where the Board found unlawful assistance in violation of 8(a)(2) of the Act. In that case, the employer permitted union representatives to come into the plant, use an office, and talk with employees on company time. The union representatives were given a list of employees as was the UFCW representatives. The Board noted that even though the employer's president was not present in the office when the representatives spoke with employees, his episodic visitation to the office used by the union, did not detract from the quality or the quantity of the rendered assistance. The totality of the circumstances indicates that Aaron Manor created conditions leading employees to believe that management expected them to sign cards for the UFCW and to do so promptly. Duane Reade, Inc., 338 NLRB 943 (2003).

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Additionally, a finding of Aaron Manor's unlawful assistance to the UFCW is further supported by Aaron's Manor denial of access to the SEIU. Credible record evidence reflects that Aaron Manor was aware that the SEIU planned to launch an organizing campaign at its facility. There is no dispute that many of the same employees had worked for Brae Loch during the SEIU organizing campaign at that facility. Aaron Manor owner Dennis Christiano was familiar with the SEIU because of his ownership interest in both Westgate and Brae Loch. Although the SEIU's campaign at Brae Loch was suspended before its completion, there is no dispute that the SEIU campaign at Westgate involved a bitter struggle between the SEIU and Westgate management. Pascocello testified that Christiano did not want to deal with the SEIU because of what had occurred at the Westgate facility. Dilal admitted that

<sup>12</sup> Tecumseh Corrugated Box Co., 333 NLRB No. 1, slip op. at 6 (2001).

Christiano asked him whether the SEIU was involved in organizing activities at Aaron Manor. Thus, there is no doubt that Christiano wanted to avoid the SEIU's initiation of a campaign at Aaron Manor. The recognition of the UFCW as its employees' collective bargaining representative provided Aaron Manor an opportunity to prevent such a campaign by the SEIU.

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As discussed above, the evidence reflects that Aaron Manor's support for the UFCW exceeded the bounds of ministerial cooperation and its actions would have lead employees to conclude that Aaron Manor favored their selection of the UFCW as their collective bargaining representative. The Board has also found that authorization cards obtained with the employer's assistance and in violation of the statute are tainted and may not be used to establish a union's majority status. Dejana Industries, 336 NLRB 1202 (2001). A pattern of employer assistance may, in fact, be sufficient to invalidate all of the cards. Famous Castings Corp., 301 NLRB 404, 408 (1991). The Board has also noted: "the General Counsel need not prove with mathematical certainly that the union lacked majority support at the time of recognition where there is evidence that the employer unlawfully assisted a union's organizational campaign." Fountainview Care Center, 317 NLRB 1286, 1289 (1995). In determining whether a pattern exists, all of the circumstances may be examined, including pre-recognition conduct and post-recognition conduct. Farmers Energy Corp., 266 NLRB 722, 722 (1983). Accordingly, the UFCW's recognition is tainted and may not be supported by the claimed majority support that was achieved as a result of Aaron Manor's unlawful activity. Michigan Road Maintenance Company, 344 NLRB No. 77, slip op. at 13 (2005); Windsor Castle Healthcare Facilities, Inc., 310 NLRB 579, 590 (1993).

### C. The Validity of the Signed Authorization Cards

Counsel for the General Counsel also submits that the UFCW lacked the requisite majority status because of the invalidity of certain cards. Counsel submits that the UFCW only presented 53 cards from non-supervisory employees for the card count out of the stipulated unit of 99. Six employees were presented by Counsel for the General Counsel to demonstrate the invalidity of their cards because of the UFCW's misrepresentations. Counsel for the General Counsel maintains that because of the UFCW's misrepresentations, these cards were invalid and the UFCW did not have the requisite 50 cards to establish majority support. While I find the UFCW's recognition to be tainted, I do not rely upon these six cards as a basis for the taint or the lack of majority support.

The authorization cards signed by the employees contained the following wording in bold print at the top of the card: "PROFESSIONAL & HEALTH CARE DIVISION." The second line contains the following in smaller non-bold print: "United Food & Commercial Workers District Union Local One." The third line of the card indicates the affiliation with the AFL-CIO. The fourth line in larger bold print includes these capitalized words: "AUTHORIZATION FOR REPRESENTATION." The fifth line of the card includes: "I hereby authorize the United Food & Commercial Workers District Union Local One, AFL-CIO, CLC, to represent me for the purpose of collective bargaining. The remainder of the card contains designated areas for the employee to complete his or her name, signature,

address, telephone number, employer's name, hire date, type of work performed, department, hourly rate, days off, shift, and the employee's full-time or part-time status. The final question on the card is an inquiry as to whether the employee is interested in participating in an organizing committee.

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Sharon Toombs testified that the union representatives told her that she needed to fill out the information on the authorization card for the union to send additional information. Tombs did not testify that the union representatives told her that the only purpose of the card was to provide her with more information. Tombs recalled that she spoke with the union representative for approximately ten minutes and the representative talked with her about the union's ability to get more money for the kitchen employees and to improve the working conditions in the kitchen. Tombs filled out the authorization card including her name, date, address, and signature. She also added her telephone number and included that she worked in dietary and that her hourly rate was \$7.50.

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Luis Mora who is a part of the housekeeping department recalled that when UFCW Representative Phelan gave him the union authorization card, he took it and placed it in his back pocket and told Phelan that he would think about it. Mora remembered that he had some question about whether his classification would be included in the "union group." Phelan told him that the union was there to take care of everybody. Approximately an hour later, Mora spoke again with Phelan and one of the other representatives. Mora told the representatives about the Housekeeping Department issues and his concerns that Housekeeping had been treated differently when employees were transferred to Aaron Manor. Mora acknowledged that before signing the card, he spoke about the issues involved with his being employed by Healthcare Services. Mora testified that Phelan told him that signing the card was for the union to get additional information and to invite him to an informal meeting. acknowledged, however, that prior to signing the card, he completed the informational part of the card outside the presence of the union representatives. He admitted that he was sure that at the time that he completed the card, the wording "authorization for representation" appeared at the top of the card. He recalled that he included his name, address, and telephone number. He also checked the portion of the card indicating that he would like to participate in an organizing committee.

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Myrian Williams also recalled that the union representatives asked her to complete the card "so they could send me brochures and information about the union." She also recalled that when she spoke with the union representatives, they discussed various things about the union.

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Teresa Mazza was terminated from Aaron Manor on July 12, 2005. She is now employed at another nursing care facility that is represented by the SEIU. She alleged that when she initially declined to fill out the authorization card, Alcuri told her: "just fill it out because it's just for information so we can send you stuff in the mail." She recalled that she asked: "What does it take to bring a union into the facility?" One of the union representatives replied: "Oh, we already got 75 percent of our cards filled." Mazza admitted that in her affidavit given to the Board during the investigation, she previously testified: "One

of the union reps said they already had 75 percent of employees signed up and we would probably be union. I asked how long it would take. He responded it would be a couple of months."

Linda Rodriguez testified that when she spoke with the UFCW representatives, they told her that they had been brought in by "the boss" because they represent another facility and that they were there to help the employees with their wages. They inquired about her status and her rate of pay. The representatives showed her an authorization card and asked her to complete the card. She recalled that they told her that the card was to have information sent to her home. She acknowledged, however, that she signed the card and read the information requested on the face of the card. Rodriguez's card reflects her name, signature, address, telephone number, hire date, and position. While the card also reflects marks indicating that she was part-time and interested in participating on an organizing committee, she could not recall whether or not she had made those particular markings.

Elizabeth Ruiz testified that when she spoke with the union representatives they asked her about her concerns at the facility. They specifically asked about whether she had staffing concerns or money concerns. She recalled that the representatives asked her to "fill out a card" for them to get more information. Ruiz admitted that when she completed the card, she had the opportunity to look at each line before including the information. The card completed by Ruiz contains her name, signature, date of signing, address, telephone number, name of employer, and a mark designating that she was a full-time employee. Ruiz testified that when she signed the card, she understood the meaning of "authorize" and "represent." She acknowledged that her signature on a document means that she understands and agrees with the document.

Alcuri testified that he told employees that if the union had a majority, the union and the employer would sit down and bargain a contract. He asserted that he told employees that they would not be union members until a contract was ratified. Phelan testified that he told employees that signing the cards did not make them a union member; it just authorized the union to represent them for purposes of collective bargaining. Alcuri, Phelan, and Manna all denied that they ever told employees that the authorization card was for information only.

### D. Applicable Law and Conclusions Concerning the Validity of the Cards

Citing the Board's decision in *Levi Strauss & Co.*, 172 NLRB 732 (1968), enfd. 441 F.2d 1027 (D.C. Cir. 1970), the UFCW argues that the initial inquiry in determining the intent of a card signer is the wording on the card. In *Levi Strauss*, the Board specifically noted that where a card on its face clearly declares a purpose to designate the union, the card itself effectively advises the employee of that purpose. In *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), the Court stated: "Under the *Cumberland Shoe* doctrine, <sup>13</sup> if the card is unambiguous (i.e. states on its face that the signer authorizes the Union to represent the employee for collective beginning purposes and not to seek an election), it will be counted

*Cumberland Shoe Corp.*, 144 NLRB 1268 (1963).

unless it is proved that the employee was told that the card was to be used solely for the purpose of obtaining an election."

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In the instant case, all of the card signers who testified completed the card in part or in total. The cards signed by Mora, Ruiz, Rodriguez, Mazza, and Toombs all contain additional information and more than simply their signatures. Mora testified that he kept the card for at least an hour after receiving it and he completed the requested information outside the presence of the union representatives. Thus, the evidence supports a finding that these employees had the opportunity to read the cards that they signed. There was no indication that any of these employees had any visual deficit or language difficulties that would have prevented their ability to adequately read and understand the cards before signing. All of six employees testified that the union representatives told them that they needed the cards completed for the union to send them additional information about the union. Based upon the employees' overall testimony, I do not doubt that the union representatives may have stressed or even overemphasized their explanation that the completion of the cards would allow additional information to be sent to the employees. Based upon the credible testimony of these employee witnesses, it would also appear that the union representatives did nothing to clarify or explain the significance of signing the cards. While the representatives may have glossed over the impact of signing the card by emphasizing that the personal data on the card would be used to provide additional information, the overall record does not support a finding of fraud or willful deceit that would invalidate the card. As the Board observed in Cumberland Shoe Corporation, ibid, at 1269, "the failure of the Union's solicitors to affirmatively restate [the authorization contained in the card] does not indicate that it was abandoned or ignored."

While the representatives obviously emphasized that completing the information on the card allowed the UFCW to send additional information, there is no evidence that the representatives disavowed the authorization for representation contained on the face of the card. Mazza admitted that when she spoke with Alcuri, she asked how long it would take to have a union at the facility. He told her that the UFCW already had 75% of their "votes" that day. Toombs and Williams testified that the representatives told them that by filling out the card, the union would send more information about the union. They did not, however, testify that the representatives told them that providing additional information was the only purpose for completing the card. As discussed above, Mora voiced his concerns to the representatives about whether his classification would be included in the potential bargaining unit. Clearly, his conversation indicated that he understood that the UFCW wanted to represent him as his collective bargaining representative. There is no dispute that he had full opportunity to review all of the wording on the card inasmuch as he held the card for at least an hour outside the presence of the representatives. His testimony did not indicate that any of the representatives negated or contradicted the wording contained on the card.

Accordingly, I do not find that the individual cards signed by Toombs, Ruiz, Williams, Rodriguez, Mora, and Mazza were invalidated because of unlawful representation by the UFCW representatives. While I have found the recognition based upon these cards to be tainted because of Aaron Manor's unlawful assistance, I do not find the individual cards

invalidated because of the alleged misrepresentation and in the absence of Aaron Manor's unlawful assistance, the cards would otherwise represent a valid designation of the UFCW.<sup>14</sup>

### E. The Unlawful Union Security Clause

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There is no dispute that the collective bargaining agreement entered into and maintained by Aaron Manor and the UFCW contains a union security clause requiring the tendering of dues under this provision. It is a separate violation of Section 8(a)(1), (2) and (3) of the Act when an employer enters into and maintains a collective bargaining agreement containing a union security clause when the labor organization does not enjoy a majority of the employees in the bargaining unit, and the labor organization therefore violates Section 8(b)(1)(A) and (2) of the Act by entering into and maintaining an agreement with such a clause. See *Alliant Foodservice, Inc.*, 335 NLRB 695, 704 (2001); *Lowe's Markets, Inc.*, 311 NLRB 1281, 1285 (1993). Accordingly, Aaron Manor and the UFCW have further violated the Act by the inclusion and maintenance of the union security clause in its May 2005 collective bargaining agreement.

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### F. Healthcare Service's Involvement in the Unlawful Assistance

Counsel for the General Counsel acknowledges that only Aaron Manor is culpable in

unlawfully assisting the UFCW by extending to it a level of cooperation that was denied to the SEIU. There is no record evidence that Healthcare Services knew or should have known of Aaron Manor's unlawful acts. It appears that as a joint employer with Aaron Manor, Healthcare Services simply recognized the UFCW as the collective bargaining representative of its employees based upon the representations of Aaron Manor and the UFCW. Despite the fact that there is no evidence that Healthcare Services engaged in any independent violations of the Act or even knew of Aaron Manor's unlawful actions, Healthcare Services is also found to be in violation of Sections 8(a)(1), (2) and (3) of the Act. As the Supreme Court held in *ILGWU v. NLRB (Bernhard-Altmann Texas Corp.*), 366 U.S. 731, 737 (1961), an employer's "good-faith" does not preclude a finding that the employer violated the Act by recognizing a union which, in fact represented a minority of the employer's employees at the

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#### **Conclusions of Law**

1. Healthcare Services Group, Inc. and Aaron Manor Rehabilitation and Nursing 40 Center, LLC are employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

time of the union's demand for recognition.

See *Colonial Lincoln Mercury Sales*, 197 NLRB 54, 66 (1972), enfd. 485 F.2d 455 (5<sup>th</sup> Cir. 1973) where an employee's card was determined to be valid even though he was told that the card was to set up a preliminary meeting and he told the solicitor that he did not want to join a union. See also the court's decision in *NLRB v. WKRG-TV, Inc.*, 470 F.2d 1302 (5<sup>th</sup> Cir. 1973) where the card was not invalidated even though the signers were told that by signing the card, a union representative would visit and explain the union to them.

- 2. 1199 SEIU New York's Health and Human Services Union and the United Food and Commercial Workers, Local 1 are labor organizations within the meaning of Section 2(5) of the Act.
- 3. Aaron Manor Rehabilitation and Nursing Center, LLC has rendered unlawful assistance and support to the United Food and Commercial Workers, Local 1 and has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of 8(a)(1) and (2) of the Act.
- 4. Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. have violated Sections 8(a)(1), (2), and (3) of the Act by recognizing the United Food and Commercial Workers, Local 1 as the exclusive bargaining representative of its employees, at a time when the United Food and Commercial Workers, Local 1 did not represent a valid majority of said employees.
  - 5. Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. have violated Sections 8(a)(1), (2), and (3) of the Act by entering into a collective bargaining agreement with the United Food and Commercial Workers, Local 1 containing a union security clause at a time when the United Food and Commercial Workers, Local 1 did not represent a valid majority of its employees.

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- 6. The United Food and Commercial Workers, Local 1 has violated Sections 8(b)(1)(A) and (2) by accepting recognition from and signing a contract with, Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc., which contained a union security clause.
- 7. By asking employees if they have met with the United Food and Commercial Workers, Local 1, Aaron Manor Rehabilitation and Nursing Center, LLC violated Section 8(a)(1) of the Act.
- 8. The unfair labor practices enumerated above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I recommend that Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc., be ordered to withdraw and withhold recognition from the United Food and Commercial Workers, Local 1 as the exclusive bargaining represent for their employees, unless and until the United Food and Commercial Workers, Local 1 has demonstrated its majority status and is certified as the exclusive bargaining representative of its employees in an appropriate unit. I also recommend that Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. cease giving effect to the May 10,

2005 collective bargaining agreement executed with the United Food and Commercial Workers, Local 1, or any renewal, modification, or extension thereof. Further, I recommend that Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. and United Food and Commercial Workers, Local 1 reimburse with interest thereon, all present and former unit employees for all initiation fees, dues, and other monies paid or withheld from employees' wages pursuant to the union-security clause in that contract, or any extensions, modification, or renewal thereof. Nothing contained herein shall be construed as requiring Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. to vary the wages, hours, seniority, or other substantive terms of employment that Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. have established in the performance of said contract, or to prejudice the assertion by its employees of any rights that they may have under the terms of the contract.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:15

### **ORDER**

The Respondent, Aaron Manor Rehabilitation and Nursing Center, LLC, Fairport, New York, its officers, agents, successors, and assigns, shall:

### 1. Cease and desist from:

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(a) Rendering unlawful assistance and support to the United Food and Commercial Workers, Local 1.

- (b) Recognizing the United Food and Commercial Workers, Local 1 or any other labor organization as the bargaining representative of its employees for the purpose of collective bargaining at a time when the United Food and Commercial Workers, Local 1 or any other labor organization does not represent a valid majority of its employees.
- 35 (c) Giving effect to, performing, or in any way enforcing the collective bargaining agreement with the United Food and Commercial Workers, Local 1 effective May 10, 2005, or any renewal, extension, or modification thereof; provided that nothing herein shall be deemed to require Aaron Manor Rehabilitation and Nursing Center, LLC from varying or abandoning any wage, hour, seniority, or other substantive terms of employment established under such contract, or to prejudice the assertion by employees of any rights that they may have under the contract.
  - (d) Interrogating its employees concerning their union membership, activities, and sympathies and the union membership, activities, and sympathies of other

<sup>15</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees.

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- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Withdraw and withhold its recognition of the United Food and Commercial Workers, Local 1 as the representative of unit employees unless and until it has been certified as their collective bargaining representative pursuant to a secret ballot election to represent them.
- 15 (b) Jointly and severally with Healthcare Services Group, Inc. and the United Food and Commercial Workers Local 1 reimburse all present and former employees for all initiation fees, dues, and other moneys paid by or withheld from them pursuant to the unlawful union-security clause, in the manner provided in the Remedy section of this decision.
  - (c) Preserve, and upon request, make available to the Board or its agents, for examination and copying all payroll records, social security payment records, timecards, personnel records, and reports and all other records necessary to analyze and compute the amount of dues reimbursement due under the terms of this Order.
- (d) Post at its Fairport, New York facility, copies of the attached notice marked "Appendix A." Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Aaron Manor Rehabilitation and Nursing Center, LLC's authorized representative, shall be posted by Aaron Manor Rehabilitation and Nursing Center, LLC immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Aaron Manor Rehabilitation and Nursing Center, LLC to insure that said notices are not altered, defaced, or covered by any other material.
- (e) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken by Aaron Manor Rehabilitation and
   40 Nursing Center, LLC to comply herewith.

The Respondent, Healthcare Services Group, Inc., Fairport, New York, its officers, agents, successors, and assigns, shall:

### 1. Cease and desist from:

(a) Recognizing the United Food and Commercial Workers Local 1 or any other labor organization as the bargaining representative of its employees for the purpose of

collective bargaining at a time when the United Food and Commercial Workers, Local 1 or any other labor organization does not represent a valid majority of its employees.

- bargaining agreement with the United Food and Commercial Workers, Local 1 effective May 10, 2005, or any renewal, extension, or modification thereof' provided that nothing herein shall be deemed to require Healthcare Services Group, Inc. from varying or abandoning any wage, hour, seniority, or other substantive terms of employment established under such contract, or to prejudice the assertion by employees of any rights that they may have under the contract.
  - 2. Take the following affirmative action necessary to effectuate the policies of the Act:
  - (a) Withdraw and withhold its recognition of the United Food and Commercial Workers, Local 1 as the representative of unit employees unless and until it has been certified as their collective bargaining representative pursuant to a secret ballot election to represent them.

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- 20 (b) Jointly and severally with Aaron Manor Rehabilitation and Nursing Center, LLC and the United Food and Commercial Workers Local 1 reimburse all present and former employees for all initiation fees, dues, and other moneys paid by or withheld from them pursuant to the unlawful union security clause, in the manner provided in the Remedy section of this decision.
  - (c) Preserve, and upon request, make available to the Board or its agents, for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amount of dues reimbursement due under the terms of this Order.
- (d) Post at its Fairport, New York facility, copies of the attached notice marked "Appendix B." Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Healthcare Services Group, Inc.'s authorized representative, shall be posted by Healthcare Services Group, Inc. immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Healthcare Services Group, Inc. to insure that said notices are not altered, defaced, or covered by any other material.
  - (e) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken by Healthcare Services Group, Inc. to comply herewith.

Respondent, United Food and Commercial Workers, Local 1, , its officers, agents, and representatives, shall:

### 1. Cease and desist from:

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- (a) Demanding that Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. recognize it or deal with it concerning the working conditions of unit employees, unless and until it has been certified as their collective bargaining representative pursuant to a secret ballot election.
- with Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. concerning the working conditions of the unit employees, unless and until it has been certified as their collective bargaining representative pursuant to a secret ballot election, providing that nothing in this Order shall require Aaron Manor Rehabilitation and Nursing Center, LLC or Healthcare Services Group, Inc. to vary or abandon any existing wages or benefits established for employees under the collective bargaining agreement effective May 10, 2005.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
  - (a) Jointly and severally, with Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. reimburse all present and former unit employees for all initiation fees, dues, assessments, or any other moneys that may have been paid or that were withheld from their pay pursuant to the aforesaid collective bargaining agreement, as well as interest on the monies due to be calculated as set forth in the Remedy section of the decision.
- notice marked "Appendix C." Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by United Food and Commercial Workers, Local 1's authorized representative, shall be posted by United Food and Commercial Workers, Local 1 immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by United Food and Commercial Workers, Local 1 to insure that said notices are not altered, defaced, or covered by any other material.
- 40 (c) Forward to the Regional Director for Region 3 signed copies of the attached notice marked "Appendix C" for posting by Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. at the Fairport, New York facility as set forth above in this decision for 60 consecutive days in places where notices to employees are customarily posted.
  - (d) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken by the United Food and Commercial Workers, Local 1 to comply herewith.

### Dated, Washington, D.C., November 25, 2005.

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	Margaret G. Brakebusch Administrative Law Judge
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### APPENDIX A

#### NOTICE TO EMPLOYEES

### Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
  Choose representatives to bargain with us on your behalf
  Act together with other employees for your benefit and protection
  Choose not to engage in any of these protected activities.
- WE WILL NOT unlawfully assist the United Food and Commercial Workers, Local 1, herein UFCW, or any other labor organization in obtaining authorization cards from our employees in order to interfere with, restrain, or coerce our employees in their selection of a collective bargaining representative of their own choosing.
- WE WILL NOT ask employees if they or other employees have spoken to the UFCW or to any other labor organization.
- WE WILL NOT recognize or bargain with the UFCW as the collective bargaining representative of our employees at our Fairport, New York facility until the UFCW has been certified by the National Labor Relations Board as the representative of such employees.
- WE WILL NOT recognize any labor organization that we have unlawfully aided or assisted in its organizational efforts.
  - **WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.
- WE WILL NOT maintain or enforce our collective bargaining agreement with the UFCW, dated May 10, 2005, or any renewal, extension, or modification thereof; provided, however, that nothing in this Order shall authorize, allow, or require the withdrawal or elimination of any wage increases or other benefits that may have been established pursuant to such agreements.
  - **WE WILL** immediately withdraw and withhold recognition from the UFCW, as the representative of our employees, unless and until the UFCW has been certified by the National Labor Relations Board as your exclusive representative.

### JD(ATL)-51-05

WE WILL cease giving effect to the collective bargaining agreement dated May 10, 2005, or any other modification, amendment, extension, or renewal of the agreement, however, we shall not vary or abandon any wage increase or other improvement in benefits, terms, and conditions of employment that may have been established pursuant to this agreement.

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**WE WILL**, jointly and severally with Healthcare Services Group, Inc. and the United Food and Commercial Workers Union, Local 1 reimburse, with interest, all former and present employees for all initiation fees, dues, and other moneys paid by or withheld pursuant to the unlawful union-security clause included in the May 10, 2005 collective bargaining agreement.

### AARON MANOR REHABILITATION AND NURSING CENTER, LLC

(Employer)

Dated	By		
,	<b>,</b> —	(Representative)	(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional office set forth below. You may obtain information from the Board's website www.nlrb.gov

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Niagara Center Building 130 South Elwood Avenue, Suite 630 Buffalo, New York 14202-2465 (716) 551-4931, Hours: 8:30 a.m. to 5:30 p.m.

### THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

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THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.

### APPENDIX B

#### NOTICE TO EMPLOYEES

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### Posted by Order of the National Labor Relations Board An agency of the United State Government

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The National Labor Relations board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

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Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activates.

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**WE WILL NOT** recognize or bargain with the United Food and Commercial Workers, Local 1, herein UFCW as the collective bargaining representative of our employees at our Fairport, New York facility until the UFCW has been certified by the National Labor Relations Board as the representative of such employees.

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**WE WILL** immediately withdraw and withhold recognition from the UFCW, as the representative for our employees, unless and until the UFCW has been certified by the National Labor Relations Board as your exclusive representative.

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**WE WILL** cease giving effect to the collective bargaining agreement dated May 10, 2005, or any other modification, amendment, extension or renewal thereof; provided, however, that nothing in this Order shall authorize, allow, or require the withdrawal or elimination of any wage increases or other benefits that may have been established pursuant to such agreements.

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**WE WILL** jointly and severally with Aaron Manor Rehabilitation and Nursing Center, LLC and the United Food and Commercial Workers Union, Local 1 reimburse, with interest, all former and present employees for all initiation fees, dues, and other moneys paid by or withheld pursuant to the unlawful security clause included in the May 10, 2005 collective bargaining agreement.

### **HEALTHCARE SERVICES GROUP, INC.**

45	(Employer)	(Employer)	
Dated	By		
	(Representative) (Title)		

### JD(ATL)-51-05

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional office below. You may also obtain information from the Board's website <a href="https://www.nlrb.gov">www.nlrb.gov</a>.

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Niagara Center Building 130 South Elwood Avenue, Suite 630 Buffalo, New York 14202-2465 (716) 551-4931, Hours: 8:30 a.m. to 5:30 p.m.

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### THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY

ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.

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### **APPENDIX C**

### NOTICE TO EMPLOYEES AND MEMBERS

### Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

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- Form, join, or assist a union
  Choose representatives to bargain on your behalf with the employer
  Act together with other employees for your benefit and protection
  Choose not to engage in any of these protected activities.
- WE WILL NOT accept unlawful assistance from Aaron Manor Rehabilitation and Nursing Center, LLC or any employer in obtaining union authorization cards from employees.
- WE WILL NOT accept recognition from or bargain with Aaron Manor Rehabilitation and Nursing Center, LLC and Healthcare Services Group, Inc. (Employers) or otherwise act as the collective bargaining representative of their employees at their Fairport, New York facility until we have been certified by the National Labor Relations Board as the representative of such employees.
- WE WILL NOT maintain or give effect to the collective bargaining agreement of May 10, 2005 with the Employers, nor to any modification, extension, amendment, renewal, supplement, or successive agreement thereto.
- WE WILL NOT maintain, enforce, or attempt to maintain or enforce, in any manner the union-security clause of the aforementioned collective bargaining agreement.
  - **WE WILL NOT** in any like or related manner restrain and coerce you in the exercise of rights guaranteed to you in Section 7 of the Act.
  - **WE WILL** jointly and severally with the Employers reimburse, with interest, all former and present employees for all initiation fees, dues, or other moneys paid by or withheld pursuant to the unlawful union-security clause included in the May 10, 2005 collective bargaining agreement.

## UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1

(Labor Organization)

### JD(ATL)-51-05

	Dated	By		
			(Representative)	(Title)
5	enforce the Nation whether employees	al Labor Relations want union repres	is an independent Federal a Act. It conducts secret-bal sentation and it investigates To find out more about your	lot elections to determine and remedies unfair labo
10	how to file a charg	ge or election petition office set forth below	on, you may speak confident w. You may also obtain info	ially to any agent with the
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			outh Elwood Avenue, Suite 63	30
		Bur	falo, New York 14202-2465	
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